IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 18010 of 2004

Between:

J. Rama Mohan Rao, S/o. Venkata Satyanarayana,
Hindu, Charge Hand, Mechanical Engineering Department,
Visakhapatnam Port Trust, Visakhapatnam. … Petitioner

AND

1 The Joint Collector, Visakhapatnam, Visakhapatnam District.
2 The Sub Collector, Paderu, Visakhapatnam District.
3 The Chief Mechanical Engineer, Visakhapatnam Port Trust,
Visakhapatnam District.
4 A.P. Scheduled Tribes Employees'Association, Regd. No. 200/64,
Visakhapatnam District Head Quarters,
at Paderu rep. by its General Secretary R. Appa Rao, s/o. R.Gundanna.
5 R.Appa Rao S/o. Gundanna
R/o. Lochuputi Colony, Paderu, Visakhapatnam

(RR 4&5 are impleaded as per court order dt. 30-11-2004 in WPMP 27962 OF 2004)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, particularly a writ in the nature of Mandamus, declaring the action of the respondents 1 and 2 herein in initiating enquiries regarding the petitioner social status by issuing the notice (D) RC.No.294/99/C5, Dt.3-9-2004 and notice R.C.No.311/2004/LR Dt.15-6-2004 respectively as illegal and unconstitutional and further declare that, the Petitioner social status as, petitioner belong to Kondakapu Community which is Schedule Tribe was already decided.

Counsel for the Petitioner: MR.K.V.SUBRAMANYA NARASU

Counsel for the Respondents 1 & 2 : GP FOR SOCIAL WELFARE.

Counsel for the Respondent no. 3 : Mr. Ramesh Ranganathan

Counsel for the Respondents 4 & 5 : Mr. G.Vidya Sagar

The Court made the following :

ORDER:

Heard Sri K.V.Subramanya Narusu, learned counsel appearing on behalf of the petitioner and the learned Government Pleader for Social Welfare appearing on behalf of the respondents 1 and 2, Sri Ramesh Ranganathan, learned counsel appearing on behalf of the third respondent and Sri G.Vidya Sagar, learned counsel appearing on behalf of the respondents 4 and 5.

The only short question involved in this Writ Petition, after hearing the counsel on either side, is as to whether the impugned notices of enquiry dated 15.06.2004 and 03.09.2004 as issued by the respondents 2 & 1 respectively herein, are valid ?

The facts, in brief, are that the petitioner herein claims to be belonging to kondakapu community, which falls under Scheduled Tribe category and on the basis of the caste certificate issued to that effect, he got appointed with the third respondent as Charge Hand in Mechanical Engineering Department and working as such. It is stated that he completed Intermediate and I.T.I. Motor Mechanic course in 1974 and 1976 respectively and registered his name in the Employment Exchange. His father, who was also employee, was recorded as Scheduled Tribe as long back as in the year 1950 itself. On sponsoring by the Employment Exchange, the petitioner was appointed after interview, which was held on 05.06.1978, after due selection. Since then, he has been working accordingly without any complaint of whatsoever nature.

However, it is submitted that it is only due to illegal eye casted on him by rivals among co-workers, who filed a false complaint against him

on the ground that his social status was not correct and he does not belong to Scheduled Tribe community and that he produced a false certificate. It is submitted that enquiries were already conducted in the years 1979 and 1981 and on both the occasions, it was found by the competent authority that he belongs to Kondakapu community and that the original caste certificate produced by him to his employer at the time of initial appointment was found to be genuine. However, once again, the very same rivals initiated fresh proceeding by filing false complaints, whereupon the impugned notices have been given by the respondents 2 and 1 respectively.

In the notice issued by the first respondent on 03.09.2004, which only says that on receipt of complaint by the office, an enquiry was sought to be conducted and therefore, the petitioner was asked to be present on 17.09.2004 at 12.00 noon. Similarly, the notice issued by the second respondent dated 15.06.2004 reiterates that on the complaint received against him, enquiry was fixed at 02.07.2004 at 11.00 AM. On a bare reading of the aforesaid notices, it is clear that they are merely notices of enquiries. Admittedly, no show cause notice was given to the petitioner prior to issuance of these notices. Further, it is not known as to how the third respondent issued such notice for conducting enquiry contemplating to go into the correctness of the certificate issued in respect of social status since he is not the competent authority under the provisions of the Andhra Pradesh (S.C., S.T. & B.Cs.) Regulation of Issue of Community Certificates Act, 1993 and Rules, 1997. In fact, it is only the first respondent, who is the competent authority to conduct any such enquiry and go into the question of social status and also in regard to the correctness of certificates relied on by concerned persons. Even otherwise, the notice issued by the first respondent also does not show any information as to how and why such enquiry is contemplated. Along with such notice, no other material has been furnished to the petitioner nor he was informed as to the contents of any such complaints received by either of the officers. There can not

be any dispute in regard to the power of competent authority as contemplated under the aforesaid Act and Rules, to go into all such questions provided a prior opportunity is given and after verifying whether the said allegations are correct or not. In this case, father of the petitioner himself was shown as belonging to Scheduled Tribe community, which is supported by various entries in 1960 in Service Register, and all other certificates produced in the name of the petitioner also show that he belongs to Scheduled Tribe community. Further, even in the certificates subsequently issued in favour of the father of the petitioner, the same in fact has been reiterated. In view of the aforesaid circumstances, it is more desirable that before any such enquiry is sought to be initiated, an opportunity should be given to the party concerned instead of straight away contemplating an enquiry and asking such person to be present in the enquiry. Unless and until a person is informed of the nature of allegations with which he has to face and also the material which may be used against him, such person could not be in a position either to contest the allegations made against him or even to rebut the same apart from failing even to substantiate his own case. In the circumstances, it has to be held that without issuing prior show cause notice, no such enquiry is sustainable.

The Writ Petition is, accordingly, allowed. Both the impugned notices issued by the respondents 2 and 1 dated 15.06.2004 and 03.09.2003 are set aside, with a liberty to the competent authority under the provisions of the aforesaid Act, to issue a prior show cause notice with all the details and calling upon the petitioner to explain on the allegations as sought to be made against him and subsequently, on receipt of explanation, if any, it shall be open for them to conduct enquiry in accordance with law on merits after giving due and sufficient opportunity to the petitioner during such enquiry. The entire exercise shall be completed within a period of two months from the date of receipt of copy of the order. No costs.

(B.Prakash Rao, J.)

07.03.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Monday the Seventh day of March Two thousand and five.

… Registrar

Copy to:

1 The Joint Collector, Visakhapatnam, Visakhapatnam District.

2 The Sub Collector, Paderu, Visakhapatnam District.

3 The Chief Mechanical Engineer, Visakhapatnam Port Trust, Visakhapatnam.

4 Two CCs to the G.P. for Social Welfare, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CD copies.